

PUBLIC NOTICE

BANKING AND INSURANCE
DIVISION OF BANKING
DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Notice of Receipt of and Action on Petition for Rulemaking
Consumer Information Statement: N.J.A.C. 11:5-6.9

Petitioner: Michael R. Monihan

Take notice that on or about March 28, 2006, the New Jersey Real Estate Commission (Commission) in the Department of Banking and Insurance (Department) received a petition for rulemaking from the above petitioner requesting that the Commission amend N.J.A.C. 11:5-6.9 to delete any reference in the rule to brokerage firms or licensees being required to explain or advise buyers, tenants, sellers, or landlords of the different real estate relationships and their respective effects.

The petitioner states that the current requirements of N.J.A.C. 11:5-6.9 are subjective and put brokerage firms and/or the licensees in a precarious position, in case a problem, dispute or complaint arises. The petitioner believes that if a problem, dispute or complaint arises, the customer could claim that the various real estate relationships were not explained or that they did not understand the explanation. The petitioner contends that this could happen even if it was properly explained and the customer signed the Consumer Information Statement and an Informed Consent form. The petitioner further stated that real estate licensees are constantly reminded that they are not permitted to practice law. Therefore, the petitioner believes that between the information provided by the Informed Consent form and the Consumer Information Statement, the different real estate relationships and their respective effects are clear. The

petitioner stated that if the New Jersey Real Estate Commission believes that a better explanation is necessary, then the Consumer Information Statement and the Buyer/Seller Consent Forms should be amended. Additionally the petitioner suggested that language could be added that recommends that the consumer consult an attorney. Finally, the petitioner noted that other disclosure forms or clauses, such as the Attorney Review Clause, Notification Regarding Off-Site Conditions, Lead-Based Contingency Clause, Seller's Disclosure, etc., do not require the licensee to explain their respective terms, but rely solely on the content of the form or clause to do so. As a result, the petitioner does not believe that the various real estate or agency relationships should be any different.

Take further notice that this petition was considered by the Commission at its public meeting on May 2, 2006. In accordance with N.J.A.C. 1:30-4.2 and 11:5-10.7, the Commission has determined to refer this matter for further deliberation, including additional review by staff and further consideration by the Commission prior to finalizing a notice of action on the petition for rulemaking.

In accordance with N.J.A.C. 1:30-4.2 and 11:1-5, the notice of the Commission's action on the petitioner's request shall subsequently be mailed to the petitioner and filed with the Office of Administrative Law.